

**ERIN CARTWRIGHT WEINSTEIN**

## Lake County, Illinois

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CIRCUIT, LAKE COUNTY, ILLINOIS

SERINA ERVIN, )

Petitioner, )

-and- ) No. 04 D 1943

RAYMOND ERVIN, )

Respondent . )

TRANSCRIPT OF PROCEEDINGS had in the  
above-entitled cause on the 10th day of  
February, 2017, at 1:47 p.m.

BEFORE: HONORABLE DANIEL L. JASICA

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1 APPEARANCES:

2  
3 BEERMANN, PRITIKIN, MIRABELLI & SWERDLOVE,  
4 (2275 Half Day Road, Suite 350,  
5 Bannockburn, Illinois 60015,  
6 312-621-4394,  
7 jsteele@beermannlaw.com,  
8 kcooper@beermannlaw.com,  
9 MR. JOHATHAN D. STEEL,

10 -and-

11 MR. KYLE COOPER,  
12 Appeared on behalf of the Petitioner;

13  
14 WOLF & TENNANT,  
15 (33 North Dearborn Street, Suite 800,  
16 Chicago, Illinois 60602,  
17 312-739-0300), by:  
18 MR. JAMES WOLF,  
19 Appeared on behalf of the Respondent.

20  
21  
22  
23 REPORTED BY: KAREN ORENSTEIN, CSR, RPR,  
24 CSR No. 84-4693

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1 (WHEREUPON THE FOLLOWING  
2 PROCEEDINGS WERE HAD IN THE  
3 ABOVE-ENTITLED CAUSE ON THIS  
4 DATE.)

5 THE COURT: All right. So I have read 01:47PM  
6 the motions. There's a motion to quash.  
7 There's also a motion to amend. It makes the  
8 most sense for me to attack the motion to amend  
9 first and then the motion to quash. Anything  
10 else that I'm missing? Those are the two 01:47PM  
11 motions that are pending, right?

12 MR. COOPER: That is correct, your  
13 Honor.

14 THE COURT: Okay. It is your motion for  
15 leave to amend, so I will let you argue it. 01:47PM

16 MR. STEELE: You may recall from one of  
17 the prior court dates, I made a representation  
18 to your Honor that my area of practice is  
19 primarily family law. And if someone were to  
20 come into my office today and say, As a parent, 01:48PM  
21 what's the longest period of time I can go  
22 without paying child support, I would take issue  
23 a little bit with the question because I think  
24 as an officer of the court and as someone who is

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1 supposed to look out for the best interest of  
2 children, I would say, Support your children;  
3 they are your kids; they need to be supported.  
4 But if you were asking me a hypothetical  
5 question, I would say maybe a year before you 01:48PM  
6 were going to find yourself in trouble not  
7 paying child support.

8 This case centers around Raymond  
9 Ervin going the entire childhood of his children  
10 without paying any child support, which is a 01:48PM  
11 travesty of an injustice. And the saying that  
12 he has millions for defense and not a penny for  
13 support is so appropriate in this case. This  
14 man has gone to the Appellate Court twice; he  
15 filed a PLA to the Supreme Court; he went to the 01:49PM  
16 7th Circuit; he went to the 7th Circuit Court of  
17 Appeals. Lost, lost, lost, lost. This man is  
18 out of options at this point.

19 My client is pretty destitute for  
20 funds. She has supported the kids her entire 01:49PM  
21 life. I did also make an argument in a prior  
22 court date that the State of Illinois Department  
23 of Healthcare and Family Service has a listing  
24 of what they call deadbeat parents that owe

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1 child support. And I have gone through just  
2 kind of skimming to see where he would fit in  
3 this list. And at the very least --

4 THE COURT: I take it he is not on the  
5 list.

01:49PM

6 MR. STEELE: He is not on the list. He  
7 deserves an honorable mention if he were to be  
8 on the list. By our math he owes in excess of  
9 \$700,000 without any interest being applied. So  
10 we have him as owing over a million with  
11 interest. And we've attached a table to our  
12 motion for leave to amend that shows you how we  
13 came up with the number. My first thought on  
14 how to come up with a number was to say how many  
15 lapsed between entry of the judgment and the age  
16 of majority of the children, multiply that by  
17 the amount of Canadian dollars, and then just  
18 straight convert it. And then someone smarter  
19 than me, meaning someone who doesn't do family  
20 law, says --

01:49PM

01:50PM

01:50PM

21 THE COURT: I am going to interrupt you  
22 because I have seen your motion, but I'm not  
23 sure -- I want to get that document in front of  
24 me while you are telling me about it.

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1 MR. STEELE: Sure.

2 THE COURT: I'm sure I have it here.

3 MR. STEELE: This is Exhibit F.

4 THE COURT: I have it.

5 MR. STEELE: So what we instead opted to 01:50PM

6 do to be more accurate was to go month by month

7 and to figure out what was the conversion rate

8 month by month because that would be a more

9 accurate calculation as of today's date what is

10 owed. 01:50PM

11 So in terms of equity, I think that the

12 argument to allow leave to amend strongly,

13 strongly favors Ms. Ervin. And that goes to

14 your discretion and to whether or not you should

15 grant leave to amend. And I will circle back to 01:51PM

16 that in a minute. The question that Mr. Wolf is

17 going to address -- and I'm going to try to go

18 off of his response -- is whether or not you

19 have the authority to grant leave to amend or

20 whether you have the authority to exercise your 01:51PM

21 discretion.

22 I read his response. Mr. Wolf is a

23 smart lawyer. I think he is doing the best that

24 he can with the facts that you are presented

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1 with. You are not always presented with the  
2 strongest of facts, and that's what you have to  
3 do as a lawyer. His arguments come down to what  
4 Section 616 of the Code of Civil Procedure  
5 either does not apply to pleadings or -- I'm 01:51PM  
6 sorry -- applies only to pleadings and not a  
7 citation or that it only applies before a final  
8 judgment.

9 So in reverse order, the statute  
10 does say before final judgment you can ask for 01:51PM  
11 leave to amend. The final judgment as it  
12 pertains to that statute is not whether or not  
13 there's ever been a final judgment. It refers  
14 to whether or not there's a final judgment  
15 entered on the pleading which you are seeking to 01:52PM  
16 amend.

17 If his interpretation were correct,  
18 you could never seek leave to amend any  
19 post-decree pleadings because there was a final  
20 judgment. So if you have a petition for rule to 01:52PM  
21 show cause to enforce a judgment for dissolution  
22 of marriage, you can amend that petition after  
23 the judgment. And it's not a defense to say,  
24 Well, there's a final judgment. The question is

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1 whether or not there's a final judgment on that  
2 pleading that you are seeking to amend.

3 THE COURT: Well, I think his point was  
4 if you are seeking to -- there may be ways you  
5 can amend post-judgment pleadings; but if your 01:52PM  
6 reliance is on 2-616, then at least that statute  
7 doesn't apply in this fact scenario. I think  
8 that's his position.

9 MR. STEELE: I will let him speak to his  
10 own position, but my response to that is that 01:52PM  
11 that's an incorrect reading of the statute. The  
12 test is whether or not you have a final judgment  
13 on the order that you are seeking to amend. So  
14 in this case we are seeking to amend a citation.  
15 There's been no final judgment entered on that 01:53PM  
16 citation.

17 It seems like maybe I have lost the  
18 Court on this line of argument.

19 THE COURT: There's never a final  
20 judgment entered on a citation. 01:53PM

21 MR. STEELE: I think when you enter a  
22 turnover order, that's immediately appealable.  
23 That would be a final judgment.

24 THE COURT: Okay.



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1 MR. STEELE: So I think that before the  
2 final judgment argument falls pretty easily  
3 because, if it weren't to fall, anything after a  
4 judgment was not subject to be amended, and  
5 that's an absurd result. To not be able to  
6 amend any post-decree pleadings is not the  
7 application of that statute, first.

01:53PM

8 Second, as to whether or not it  
9 applies to a citation to discover assets, a  
10 couple things; first, it does not only apply to  
11 a pleading. If you read 616(a), it says that it  
12 allows amendments to -- in any process, comma,  
13 pleading, comma, bill of particulars or  
14 proceedings.

01:53PM

15 So our first position is, this is,  
16 in fact, a pleading. To the extent you find  
17 that it's not a pleading, it's certainly a  
18 process of some sort or some sort of proceeding,  
19 so it's subject to amendment. But second of  
20 all, as I said, our position is that it is a  
21 pleading. A pleading -- and I understand  
22 Mr. Wolf cites to the Wolf case, as ironic as  
23 that sounds. The Wolf case is cited a lot in  
24 divorce cases, so I'm familiar with it. It's

01:54PM

01:54PM

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1 normally cited for the proposition that it  
2 distinguishes between the motion and a pleading  
3 as far as what is subject to attack on of 619  
4 motion to strike. A motion is an application to  
5 the Court in a pending proceeding. A pleading  
6 is allegations that bring some sort of filing  
7 that brings the parties to court.

01:54PM

8 So if you are off-call for a number  
9 of years, you file something that brings  
10 everybody back to court, it's a pleading. They  
11 can look alike but when they are filed can  
12 distinguish their character. So if you are in  
13 the middle of a -- and I'm sorry I keep using  
14 family law cases, but that's what I know -- if  
15 you are in the middle of a divorce case and it's  
16 pre-decree and you are asking the Court to  
17 modify child support, that's a motion because  
18 it's a pending proceeding and you are asking for  
19 an application of a ruling.

01:55PM

01:55PM

20 If you are post-decree and you are  
21 five years down the line, you come in and you  
22 ask to modify child support, now you are  
23 pleading because you are bringing the parties  
24 back to court.

01:55PM

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1                   A citation, by the terms of  
2                   Section 1402, is a supplementary proceeding  
3                   that's commenced by the service of a citation.  
4                   So this is a new proceeding. It's a  
5                   supplementary proceeding that stems from a  
6                   judgment. So I think under that definition it's  
7                   a pleading. At the very least, it's other  
8                   process as contemplated by Section 616.

01:55PM

9                   We also cited to Supreme Court  
10                  Rule 277, which we have cited some case law to,  
11                  for the proposition that 277 specifically  
12                  allowed for amended citations in the case that  
13                  we cited. So I think that whether or not you  
14                  can allow leave to amend is answered in the  
15                  affirmative. I think that's pretty clear. The  
16                  next question of whether or not you should, I  
17                  said I would come back to that.

01:55PM

01:56PM

18                  So there's a number of cases that I  
19                  think are persuasive. So I cite to Mitchell v.  
20                  Norman -- the cite is 291 Ill. App.3d 927 --  
21                  which stands for the proposition that any doubt  
22                  as to whether or not a plaintiff should be  
23                  granted leave to amend should be decided in  
24                  favor of allowance of the amendment.

01:56PM

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1 THE COURT: And that's just general  
2 amendment; it's not specific to --

3 MR. STEELE: Correct. So anytime you  
4 are juggling between do I allow it, you err on  
5 the side of I'm going to allow it.

01:56PM

6 And then there's another case,  
7 Dunning vs. -- I don't even know how to say  
8 this -- Dynegy. So that cite is 33 N.E.3d 179.  
9 And, again, this is more just a general  
10 statement of law that the trial Court should

01:57PM

11 exercise discretion liberally in favor of  
12 allowing amendments to pleadings to the extent  
13 that it furthers the ends of justice. I don't  
14 think that Counsel will stand before you and  
15 argue that justice is furthered by quashing

01:57PM

16 these citations, releasing the money, and  
17 continuing to deprive Ms. Ervin of support for  
18 her children. I think the ends of justice are  
19 very clearly erring on our side because the  
20 public policy in the state of Illinois strongly  
21 favors supporting children, which this man has  
22 evaded for far too long. I think the time has  
23 come for him to stop being able to avoid paying  
24 child support. I think that jobbing the legal

01:57PM

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1 system has run its course. He's gone as far as  
2 he can go.

3 At this point it's a matter of  
4 enforcement. I think that to allow him to exalt  
5 form over substance in this matter would be a 01:58PM  
6 grave injustice to Ms. Ervin and to her  
7 children. And I think even if you do exalt form  
8 over substance, the form here still favors  
9 Ms. Ervin because, as I said, I think that you  
10 have the authority. I think it's a matter of 01:58PM  
11 discretion. I think that the discretion favors  
12 granting the leave to amend.

13 And based on that, we are asking  
14 that we be granted leave to amend. And  
15 specifically what we are asking to do is that 01:58PM  
16 the citations that we are asking to amend be  
17 modified to say that the operative judgment is  
18 the judgment for dissolution of marriage, the  
19 subsequent order that enrolled it in Lake  
20 County, and then every month thereafter of 01:58PM  
21 missed support payments is a separate  
22 enforceable judgment under 505(d) of the IMDMA.

23 THE COURT: So I have a few questions.  
24 And I asked this when this case first came up,

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1 and I don't know if you currently are pursuing  
2 it. But why aren't you on the first floor of  
3 the courthouse trying to enforce that decree  
4 trying to get it reduced to a judgment figure in  
5 dollars here in 2017 or even to try to have the 01:59PM  
6 defendant held in contempt? Why are you  
7 pursuing the citation instead of going to the  
8 first floor to try to get a judgment, to get the  
9 order that you have from the Canadian Court  
10 reduced to a judgment here in Lake County? 01:59PM

11 MR. STEELE: The reason for that is,  
12 first, if we were to seek a contempt finding --

13 THE COURT: Or even just to seek an  
14 order determining --

15 MR. STEELE: The amount. 01:59PM

16 THE COURT: -- the amount. And you have  
17 had almost a month and a half since the first  
18 time this case came up to try to do that. So I  
19 don't understand why you haven't gone back down  
20 there. 02:00PM

21 MR. STEELE: If we were to seek a  
22 contempt finding, a contempt finding is  
23 immediately appealable. So we would be entering  
24 into another two years of appeal with Mr. Ervin,

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1       which I don't want to take that on on behalf of  
2       my client for a good reason. And that good  
3       reason answers the other part of your question,  
4       which is why don't you go to that Court and  
5       reduce it to a specific dollar amount. And the       02:00PM  
6       reason is under Section 505(d), I have a series  
7       of judgments as I stand here. That's why we  
8       used the original numbers in our citation that  
9       were sought to be quashed, because it was kind  
10      of just a snapshot at that point in time, what       02:00PM  
11      was owed. And Section 505(d) specifically  
12      carves out child support as not needing to be  
13      reduced to a judgment because every missed  
14      payment by operation of law is a money judgment  
15      that's enforceable by citation proceedings. So       02:00PM  
16      the answer is, I have a judgment.

17               THE COURT: Let me take a look at  
18      Section 505(d). So here it is. Any new or  
19      existing support order entered by the Court  
20      under this section -- the section being the       02:01PM  
21      Illinois Marriage and Dissolution -- shall be  
22      deemed to be a series of judgments.

23               So I guess my question is, the  
24      order that you are asking me to enforce and to

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1       deem a series of judgments is an order from a  
2       Canadian Court?

3               MR. STEELE:   That was registered in  
4       Lake County.

5               THE COURT:   That was registered in               02:01PM  
6       Lake County.   But was it a support order entered  
7       by the Court under the Illinois Marriage and  
8       Dissolution of Marriage Act?

9               MR. STEELE:   I think that upon  
10       enrollment, the answer is yes.   And the               02:01PM  
11       enrollment was contested.   I think the  
12       enrollment was the subject of appeal and it was  
13       affirmed that it was enrolled.   And it is,  
14       therefore, subject to enforcement under our  
15       laws.   02:02PM

16               So, yes, I think that once we adopt  
17       it, once we enroll it, it's governed by our  
18       Illinois Marriage and Dissolution of Marriage  
19       Act.   If it weren't, on the first floor we would  
20       be sitting there applying the Canadian law,               02:02PM  
21       which would not be an appropriate exercise of  
22       authority.   I think that once you enroll it, all  
23       of the remedies of the IMDMA are available to  
24       either party and it's as if that judgment was



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1 entered here.

2 THE COURT: So is it enrolled under some  
3 process available under the Illinois Marriage  
4 and Dissolution of Marriage Act of Illinois? Or  
5 is it simply enrolled like any other foreign 02:02PM  
6 judgment would be enrolled in Lake County?  
7 Maybe I need to take a look at the order of  
8 enrollment.

9 MR. COOPER: That's the order upholding  
10 the registration of the Canadian judgment. 02:03PM

11 THE COURT: Is it attached to one of the  
12 documents as an exhibit?

13 MR. STEELE: I don't know.

14 MR. COOPER: I don't believe that order  
15 is, your Honor, but it is cited in the motion. 02:03PM

16 THE COURT: Okay. Anything else?

17 MR. STEELE: No.

18 THE COURT: Response?

19 MR. WOLF: Yes, your Honor.

20 First, for the record, when Counsel 02:06PM  
21 was speaking, I did indicate to the Court I  
22 wished to say something which would have been an  
23 objection to anything that was beyond what I  
24 believe are the narrow issues before this Court.

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1 So I just want that for the record.

2 THE COURT: Thank you.

3 MR. WOLF: We have a narrow issue before

4 your Honor that confines the facts to what we

5 have here. And what happened, just somewhat 02:07PM

6 historically, is that the plaintiff had a

7 citation issued, based it on a judgment that had

8 been vacated, then orally before your Honor

9 started talking about another judgment that had

10 also been vacated. And now he comes before this 02:07PM

11 Court asking to amend the citation. And that's

12 all that's before this Court, all that's before

13 this Court.

14 And they come before the Court

15 relying on 2-616 of the Illinois Code of Civil 02:07PM

16 Procedure. And there are two sections to that,

17 Subsection A and Subsection C, that deal with

18 amending -- amendments generally. And it is

19 important to know that that is the section in

20 the Illinois Code of Civil Procedure that deals 02:08PM

21 with amendments, nothing else. Section A

22 provides that there can be amendments before a

23 judgment. And as I pointed out, you can't have

24 a citation unless there is a judgment, so that's

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1 inapplicable.

2 Secondly, C provides that you can  
3 amend pleadings. And I am underlining pleadings  
4 to conform with proofs. It's not just amending  
5 pleadings, but you have to be amending them to 02:08PM  
6 conform with proof. That's what it says.

7 So what we have here, first of all,  
8 is you cannot have a citation unless you have a  
9 judgment, so A is inapplicable. C, whether we  
10 argue it's not a pleading -- and we think we 02:09PM  
11 have authority, and I have been cautioned often  
12 by judges who when I refer to a motion as a  
13 pleading say, Counsel, that's not a pleading.

14 They say there are specific pleadings and we  
15 know them. There's a complaint; there's an 02:09PM  
16 answer; there's a reply; there's a counterclaim  
17 and an answer or reply to the counterclaim. And  
18 so C provides that it only applies to pleadings  
19 but only to conform with proof.

20 Now, accordingly, coming on upon 02:09PM  
21 2-616 provides no avail for the plaintiff here.  
22 They cannot amend pursuant to 2-616. And they  
23 have not submitted to this Court or quoted from  
24 any other provision that allows amendment under

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1 the Illinois Code of Civil Procedure. There is  
2 no other one. That is it, 2-616.

3 Now, what they have said in their  
4 pleading, they said, Oh, we have presented  
5 cases. And I think the language they used is 02:10PM  
6 where a party has used Supreme Court Rule 277 to  
7 amend a citation to discover assets. Here's the  
8 cases.

9 THE COURT: I have read the cases.

10 MR. WOLF: Not a mention of 277. 02:10PM

11 THE COURT: There's a mention to an  
12 amended citation to discover assets, but it  
13 doesn't describe --

14 MR. WOLF: Let's talk about how we can  
15 go about issuing an amended citation. As the 02:10PM  
16 plaintiff did here, I could go down to the  
17 clerk's office using the caption of this case  
18 and come up with a fictitious date and a  
19 fictitious amount for a judgment and the clerk  
20 will issue a citation. Monday I could walk in 02:10PM  
21 to the clerk and title something an amended  
22 citation, present it to the clerk, they stamp  
23 it, and give it back to me. That's how a  
24 citation is issued. It doesn't go before the

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1 Court. It's a simple clerical matter. That's  
2 presumably what they could have done in each of  
3 those cases. But it doesn't say so. All it  
4 says is they were issued. And the only person  
5 who issues a citation is the Clerk of the Court. 02:11PM  
6 So these cases are of no benefit to the  
7 plaintiff at all. I mean, they don't provide  
8 any authority that under 277 you can amend.

9 THE COURT: Just so I'm clear, is it  
10 your position that there's no -- and I 02:11PM  
11 understand they have only cited 2-616 but under  
12 your understanding, there's no authority  
13 whatsoever for the issuance or the  
14 Court-sanctioned allowance of an amended  
15 citation to discover assets? 02:11PM

16 MR. WOLF: I'm relying on the plaintiff.  
17 They haven't presented any. I know of none.

18 THE COURT: Okay. Go ahead.

19 MR. WOLF: So therefore -- and quite  
20 simply, we have a citation that was improperly 02:11PM  
21 issued, there being no judgment. The plaintiff  
22 has come before this Court and said, We want to  
23 amend it and we want to amend it under 2-616.  
24 2-616 does not allow them to amend this

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1 proceeding, this document.

2 THE COURT: What about their argument  
3 that this is a process, it's a post-judgment  
4 process under 616(a), and it's a new process,  
5 separate process, a supplemental process, if you 02:12PM  
6 will, and that therefore they can amend it  
7 anytime prior to -- and I don't know what a  
8 final judgment and citation is, but their  
9 suggestion is a turnover would be a final  
10 judgment in the citation. But, anyway, reliance 02:12PM  
11 on 616(a) to say that they are changing the  
12 claims and allegations and any process  
13 allocating bill of particulars or proceedings.  
14 So this is a proceeding that they can amend  
15 under 616(a) because it's a supplemental. It's 02:13PM  
16 a new proceeding.

17 So the fact that there was a final  
18 judgment, yes, it's prerequisite to a  
19 supplemental proceeding, but there's still some  
20 final judgment that would be entered on the 02:13PM  
21 citation and therefore they can avail themselves  
22 of 616(a).

23 MR. WOLF: Well, under 2-616(a), the  
24 legislature has used specific language. And had

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1       they wanted it to be broader than it is, they  
2       could have added that language. They have not  
3       done it. And it's not up to the Court to add  
4       language. You can interpret, you can enforce,  
5       which is very topical these days nationally, but       02:13PM  
6       the Court cannot add language to something that  
7       the legislature has promulgated. And the  
8       language, I think, is very specific. It's very  
9       narrow. And I submit that the attempt to amend  
10      the citation must be denied because there is no       02:14PM  
11      basis in law.

12               The plaintiff argues, as they  
13      might, they have not presented the Court with  
14      any basis to amend that. We have looked and  
15      presented the Court with 2-616; we have argued       02:14PM  
16      on that because that is what the plaintiff  
17      relied on. And that does not provide them any  
18      basis to have this Court to allow them to amend.

19               So given all of that -- and I  
20      understand, you know, when you don't have the       02:14PM  
21      law, you use the facts. And I understand the  
22      facts of this case. I'm not going to comment on  
23      them, but I don't think they are relevant. The  
24      only facts that are relevant are as they relate

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1 to the motion to amend.

2 Respectfully, I think it should be  
3 denied.

4 THE COURT: And it's your motion, so I  
5 would give you the final word. 02:14PM

6 MR. STEELE: I would like to correct a  
7 misstatement. He argued that I made an oral  
8 request premised upon a second judgment that was  
9 vacated. That's not correct. Our initial  
10 citation was premised upon a judgment that was 02:15PM  
11 vacated. We filed a response and said, Let us  
12 use this judgment, and it turned out that was  
13 vacated.

14 But when we argued to your Honor,  
15 your Honor asked me, Are you making an oral 02:15PM  
16 motion to amend your citation to cite as the  
17 basis of dissolution?

18 And I said, Yes.

19 And you said, Well, I'm not going  
20 to entertain it as an oral motion; I'm going to 02:15PM  
21 enter and continue this; maybe you will file a  
22 written motion.

23 So I get the sense that you are  
24 wanting to do the right thing here and you are



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1 just wanting me to give you a basis to do it. I  
2 don't think anyone, as officers of the court,  
3 wants these children to go their entire lives  
4 without support. So when Counsel says, It's not  
5 about the facts, I take exception to that. I 02:15PM  
6 think it is about the facts. I think it is  
7 about these children that went their whole lives  
8 without support. To try to ignore it and base  
9 it solely on a technicality, I think it ignores  
10 reality. I think it ignores our purpose here to 02:16PM  
11 administer justice.

12 Second, Counsel focuses a lot on  
13 616(c). You may notice I didn't say a word  
14 about 616(c). My argument is 616(a). So it's  
15 kind of a red herring. 02:16PM

16 I'm sorry. Let me back up a  
17 second. The argument that the facts don't  
18 matter, I thought was interesting because I have  
19 only been here in two out of the three or four  
20 court appearances. But what I have not heard or 02:16PM  
21 seen in anything that was filed -- although I  
22 did think it was ironic that Counsel referred to  
23 my response as a pleading after taking exception  
24 to what is and isn't a pleading -- I haven't

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1       seen in any of the briefs a dispute that the  
2       money is owed. He is not even standing here as  
3       an officer of the court saying, My client  
4       doesn't owe the money. He's just saying, Maybe  
5       that's not the right date; maybe that's not the       02:16PM  
6       right amount. He owes in excess of the funds  
7       that have been frozen. That much is clear. He  
8       owes, we believe, \$700,000. We have frozen with  
9       our citation about \$300,000, which will provide  
10      much needed relief to my client who has been       02:17PM  
11      forced to solely support her children for her  
12      entire life.

13               Counsel says that a pleading is  
14      either a complaint, an answer, or cross-claim.  
15      I argued initially that this is a supplementary       02:17PM  
16      proceeding. So whatever initiates your  
17      proceeding is, in fact, a complaint. So if your  
18      citation initiates your proceeding, your  
19      citation is in effect your complaint.

20               Counsel argues extensively that our       02:17PM  
21      entire basis for motion for leave to amend is  
22      Section 616. I'm not sure if he missed the  
23      preamble of our motion, but we cite to  
24      Section 1402; we cite to Supreme Court 277; and

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1 we cite to Section 616.

2 I will concede that my primary  
3 argument here is 616(a). Counsel also described  
4 what he believes is the process for issuance of  
5 an amended citation that all you have to do is 02:18PM  
6 walk downstairs, write "amended citation" on a  
7 ham sandwich, hand it to the clerk, they stamp  
8 it, and you get an amended citation. I make  
9 light of the ham sandwich analogy, but I think  
10 you get the point. 02:18PM

11 That's not the process. Second,  
12 1402 specifically prohibits someone from issuing  
13 successive citations without leave of Court. So  
14 could we have made an end-run around your  
15 Honor's ruling and just gone and issued another 02:18PM  
16 citation upon what we believe it should be  
17 amended to? Sure. I'm not going to make an  
18 end-run around your Honor. I could have gone  
19 into the clerk's office, but I think that would  
20 have been improper. The code that we are under, 02:18PM  
21 which is Section 1402, specifically requires us  
22 to seek leave of Court if we are going to issue  
23 successive citations.

24 And I want to respond to what

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1 looked like your Honor's reaction to what is a  
2 final judgment in a citation proceeding. I  
3 would direct you to Illinois Supreme Court  
4 Rule 304(b)(4), which provides matters that are  
5 appealable immediately or appealable without a 02:19PM  
6 special finding. And it specifically says that  
7 a final judgment or order entered in a  
8 proceeding under Section 2-1402 -- which is this  
9 kind of proceeding -- of the Code of Civil  
10 Procedure. So the Supreme Court Rule 304(b)(4) 02:19PM  
11 specifically contemplates a final judgment in a  
12 citation proceeding because it provides that  
13 it's such a proceeding -- such a final judgment  
14 is, in fact, appealable.

15 And if you are asking what would be 02:19PM  
16 a final judgment in a citation proceeding, the  
17 proceeding ends when a turnover order is  
18 entered. And I think there are other orders  
19 that can be entered when it is not issued to a  
20 third-party respondent, like if you are bringing 02:19PM  
21 in a defendant. A dismissal of it, if you find  
22 that he doesn't have money, maybe that's a final  
23 judgment. A payment schedule that's entered  
24 into by agreement, maybe that's a final

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1 judgment. But when you have a citation that's  
2 served on a third-party bank, the citation  
3 necessarily ends when they turn over the funds  
4 they have. So that's the end of that  
5 proceeding. That is the final judgment in this  
6 proceeding. If you couldn't have a final  
7 judgment in a citation proceeding, I don't think  
8 that there would be Supreme Court  
9 Rule 304(b)(4).

02:20PM

10 So for those reasons, again, what 02:20PM  
11 I'm asking your Honor to do is to allow us leave  
12 to amend the citations and allow us to get to  
13 the merits, which are that Mr. Ervin owes a  
14 significant -- probably the most significant you  
15 are going to see sitting on this bench -- amount 02:20PM  
16 of child support. And what I'm trying to do is  
17 what I think we are sworn as officers of the  
18 court, have a duty to do, which is under our  
19 public policy, to support children.

20 So I think that it's appropriate. 02:20PM  
21 I think that you should exercise your discretion  
22 to allow us leave to amend.

23 THE COURT: All right. Thank you.

24 MR. WOLF: I object to any reference to

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1 304(b) because it was not pled and it takes me  
2 by surprise.

3 THE COURT: I have considered the  
4 arguments by Counsel. I have also looked for  
5 case authority that would support either 02:21PM  
6 position. I have read the motions and the  
7 responsive documents. I do understand and  
8 appreciate that it appears that there's an  
9 inordinate amount of child support that is owed  
10 and that has not been paid. But the question 02:21PM  
11 facing the Court is whether the citation that  
12 was initially issued was proper and whether, in  
13 light of that, the Court should allow an amended  
14 citation to be issued as opposed to what's  
15 specifically contemplated in Section 277, which 02:22PM  
16 would be to grant leave to the judgment creditor  
17 to file a new and corrected citation.

18 It's undisputed that the original  
19 order upon which the citation was issued had, in  
20 fact, been vacated. There was argument -- and, 02:22PM  
21 again, Counsel probably has a better  
22 recollection than I do, but I also know there  
23 was a second order that was referenced, I  
24 believe, by the judgment creditor, as perhaps

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1 being an alternative basis for the issuance of  
2 the citation. And it was discovered that that  
3 order also had been vacated.

4 So the original citation that was  
5 issued supported by an attorney's affidavit was, 02:22PM  
6 in fact, an order that had been vacated. It  
7 strikes me that the appropriate response at that  
8 point in time would have been to seek leave,  
9 then to have issued a new citation based on a  
10 successive citation, which is specifically 02:23PM  
11 contemplated by Rule 277, which the Court would  
12 have granted and would still grant.

13 I understand the judgment  
14 creditor's position as well; but between the  
15 time they prepared that citation and got it 02:23PM  
16 served, the \$300,000 that are being frozen could  
17 be unfrozen and moved. And I assume the concern  
18 was that that money would be transferred or  
19 moved such that it would then fall back to the  
20 judgment creditor trying to search out where 02:23PM  
21 these dollars might be.

22 So having found no case authority  
23 to support the proposition that the Court can  
24 allow an amended citation to discover assets,

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1 although I did acknowledge there are cases out  
2 there where Courts have said they are faced with  
3 an amended citation to discover assets, but none  
4 of them explain how they got there or whether it  
5 was authorized by a Court, I am not going to be  
6 granting the motion to amend based on not,  
7 obviously, the fact that I'm not sure that's the  
8 correct way to do it but the proposed amendment,  
9 as I understand it, is also problematic because  
10 the judgment creditor is asking the Court to  
11 allow the amendment to cite to a Canadian  
12 judgment and asking the Court to then convert  
13 the Canadian dollars that are being owed to U.S.  
14 dollars and to calculate how much money would  
15 have been owed since the issuance of the  
16 Canadian order back in 1999.

02:24PM

02:24PM

02:24PM

17 I understand the argument that the  
18 Court has the authority to treat nonpayment of  
19 each month of the Canadian judgment child  
20 support order that didn't get paid as a judgment  
21 in the United States, but the specific statute  
22 that authorizes that does say that it's based on  
23 a support order entered pursuant to the Illinois  
24 Marriage and Dissolution of Marriage Act and the

02:25PM



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1 order that the judgment creditor seeks to go now  
2 amend and to be the basis of the amended  
3 citation is a Canadian child support order  
4 doesn't strike me as an order that was entered  
5 pursuant to the Illinois Dissolution of Marriage 02:25PM  
6 Act.

7 As I have suggested on multiple  
8 occasions, I think the recourse that remains for  
9 the judgment creditor is to go back to the  
10 family law court, file, as they have on at least 02:26PM  
11 two occasions in the past, some sort of motion  
12 to have the Canadian judgment order -- to get a  
13 judgment order in current dollars based on the  
14 nonpayment of the monthly child support from the  
15 Canadian Court. And I'm sure a first-floor 02:26PM  
16 Court would do that and then they would have a  
17 judgment here in Lake County for a sum certain  
18 upon which they could issue a citation.

19 I understand only too well that  
20 this may result in the judgment creditor having 02:26PM  
21 to go chase down dollars that should have been  
22 paid years ago. But to me that is the  
23 appropriate recourse that exists, not to try to  
24 correct and amend a citation that, frankly, was

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1       improperly issued and was sworn to by an  
2       attorney as being a valid judgment when, in  
3       fact, the judgment had been vacated.

4               So while there are certainly  
5       equitable considerations that weigh in favor of       02:27PM  
6       granting the amendment and going into some  
7       uncharted territory, there are also some  
8       equitable arguments that the citation that was  
9       issued by Counsel was, to say the least,  
10      improper.   So the motion to amend is denied.       02:27PM

11              That leaves us, I think, with the  
12      motion to quash the citations.   Any argument you  
13      wish to make on that motion?

14              MR. WOLF:   I don't think so, your Honor.  
15      I think pretty much anything that needs to be       02:27PM  
16      said has been said.   The citations we moved to  
17      quash are contained within the four corners of  
18      judgment that had never been -- it had been  
19      entered, but it had been vacated.

20              The Section 1402 in 277 requires       02:28PM  
21      there to be a valid judgment.   There was no  
22      valid judgment.   And, therefore, the only course  
23      this Court can take should be not only quashing  
24      it but terminating it because as of this date,

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1       there is no judgment.

2               THE COURT:   Any response?

3               MR. STEELE:   I'm not sure what the  
4       difference between quashing and terminating  
5       would be in this context.

02:28PM

6               I have a question for the Court as  
7       far as your ruling on the prior motion.   I  
8       understand you're suggesting an available remedy  
9       to the plaintiff.   Are you making a finding that  
10      that's the only remedy that's available to the       02:28PM  
11      plaintiff?   Because it's our intention to issue  
12      another citation premised upon what we believe  
13      is our judgment.

14              THE COURT:   Are you seeking leave of  
15      court to do that?                                       02:29PM

16              MR. STEELE:   Yes, I am.   And I think  
17      that there's authority for the proposition  
18      that -- based on your concern that it was not  
19      entered by this State -- and I'm going to  
20      paraphrase because I only hear it; I don't           02:29PM  
21      actually read it -- that a judgment entered by  
22      another authority has the same attributes when  
23      enrolled as though it had been enrolled in this  
24      state.

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1                   So I still think that despite the  
2 fact it was entered in another jurisdiction,  
3 when it was enrolled here, it's still  
4 enforceable here. I think that it's still  
5 subject to our laws as if it were entered here. 02:29PM  
6 I think that's what it means when something is  
7 enrolled.

8                   So our intention is to issue a  
9 citation and to the extent your Honor had not  
10 had the issue before you, at this time, because 02:29PM  
11 you are not granting us leave to amend, I'm just  
12 asking, are you making any such claim being that  
13 we are prohibited? Or can we, in fact, have  
14 leave to issue a successive citation?

15               THE COURT: So before I directly 02:30PM  
16 respond, what I have appears to be an oral  
17 motion to issue a successive citation.

18                   And your response to that?

19               MR. WOLF: I do object to that, your  
20 Honor. I think he has a right to come before 02:30PM  
21 you with the motion. And that matter is not  
22 properly before you. So if you want to issue an  
23 order that says he can file any motion he wants  
24 to, that's one thing. But to give him a

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1 specific order saying, You can file a motion in  
2 reference to this matter, I don't think it's  
3 properly before you.

4 THE COURT: Leave is granted to file a  
5 successive or second citation to discover assets 02:30PM  
6 against the judgment debtor. I have not said  
7 that going back to the first floor is your only  
8 recourse, but obviously you have heard my  
9 thoughts and concerns with what I assume is your  
10 proposed successive citation. And I look 02:31PM  
11 forward to reading the authority and case law  
12 that would support it if, in fact, it's  
13 challenged.

14 MR. WOLF: And for the record, your  
15 Honor, I do wish to challenge the fact that you 02:31PM  
16 are granting him leave to file a successive  
17 citation because I think 277 has specific  
18 provisions that are requirements for someone who  
19 is filing a successive citation.

20 THE COURT: So just so I'm clear, what 02:31PM  
21 it says is if there's been a prior supplemental  
22 proceeding -- and, again, we didn't -- I think  
23 this is different than a situation where we have  
24 actually gone down the road and started a

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1 citation where the citation was challenged. We  
2 have never even had the initial supplemental  
3 proceeding, if you will, because it got knocked  
4 out of the box, so to speak.

5 So to the extent that a new 02:32PM  
6 citation would, in fact, require a leave of  
7 court, what it provides is that no further  
8 proceeding shall be commenced against him except  
9 with leave of court. Leave may be granted upon  
10 ex parte motion of the judgment creditor but 02:32PM  
11 only upon a finding of certain prerequisites.

12 So I'm not granting it on an  
13 ex parte basis. There's nothing in there that  
14 says it must be submitted via written motion.  
15 And under the circumstances where it was your 02:32PM  
16 motion to quash -- so we have not even  
17 started -- supplemental proceeding has not  
18 gotten underway.

19 I'm overruling your objection and  
20 I'm granting them leave to file what could be 02:33PM  
21 called a second citation to discover assets.

22 MR. STEELE: Thank you.

23 MR. WOLF: Do I then presume that the  
24 motion to quash is granted?

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1 THE COURT: The motion to quash is  
2 granted. The original or the pending citation  
3 to discover assets, whether you want to call it  
4 quashed or dismissed...

5 MR. WOLF: Terminated. 02:33PM

6 THE COURT: Involuntarily terminated.  
7 I'm fine with all of those characterizations.  
8 So why don't we just say dismissed.

9 MR. WOLF: Your Honor, just  
10 understanding what Counsel is going to do, may I 02:33PM  
11 in the order on the motion to quash, which  
12 provides that that citation is dismissed, in the  
13 meantime my client has no availability of any  
14 money for himself. And I'm not talking about  
15 withdrawing hundreds of thousands of dollars, 02:34PM  
16 but can I provide in there that the citations --  
17 and I would name the specific citations are  
18 dismissed and this citation is of no force and  
19 effect pending further order of Court?

20 THE COURT: What I typically have seen 02:34PM  
21 is orders that would say something to the effect  
22 that the citation to discover assets is  
23 dismissed and the assets which are being held  
24 are unfrozen or no longer subject to any sort of

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1       lien or freeze.

2                       What is your response to his  
3       request?

4               MR. STEELE: My response is that the  
5       funds that are being held are in a whole-life       02:34PM  
6       insurance policy. We haven't frozen a checking  
7       account or savings account, so I'm a little  
8       confused by saying his client doesn't have any  
9       money.

10                   But I think that if his motion is       02:35PM  
11       to quash the citations and the citations are  
12       quashed, I think it naturally follows that the  
13       funds are released. To the extent you believe I  
14       have any leg to stand on to say keep them frozen  
15       until we issue the new citation, of course I am       02:35PM  
16       going to ask you to do that.

17               THE COURT: And I wasn't sure what kind  
18       of account this was. So I don't think it really  
19       alters things; but I guess I would say why don't  
20       we say this, the citations to discover assets       02:35PM  
21       are quashed and funds are released, period.

22               MR. STEELE: The only issue I would have  
23       with that language, Judge, is -- let's assume we  
24       are speedy enough to go downstairs and issue a



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1 citation right now. The companies that are  
2 holding funds are going to get a court order  
3 entered on today's date and a citation entered  
4 on today's date, they won't know timing, which  
5 one was quashed. So maybe we can say --

02:36PM

6 THE COURT: Citations dated blank,  
7 served upon blank, are quashed. And any funds  
8 being held pursuant to the citation dated blank  
9 are released.

10 MR. STEELE: Okay.

02:36PM

11 MR. WOLF: I don't want to work you any  
12 harder. It's Friday.

13 THE COURT: It's still early on a  
14 Friday. All right. You have enough to draft  
15 orders?

02:36PM

16 MR. WOLF: I think so.

17 MR. STEELE: Yes.

18 THE COURT: Thank you for your most  
19 thorough and professional arguments and  
20 presentations.

02:36PM

21 (WHICH WERE ALL THE PROCEEDINGS  
22 HAD IN THE ABOVE-ENTITLED CAUSE  
23 ON THIS DATE.)  
24

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1 I, KAREN ORENSTEIN, CSR No. 84-4693, a  
2 Certified Shorthand Reporter of the State of  
3 Illinois, do hereby certify that I reported in  
4 shorthand the proceedings had at the hearing  
5 aforesaid, and that the foregoing is a true,  
6 complete, and correct transcript of the  
7 proceedings of said hearing as appears from my  
8 stenographic notes so taken and transcribed  
9 under my personal direction.

10 IN WITNESS WHEREOF, I do hereunto set my  
11 hand at Chicago, Illinois, this 17th day of  
12 April, 2018.

13  
14 

15 KAREN ORENSTEIN, CSR No. 84-4693

16 Certified Shorthand Reporter  
17  
18  
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[Page 1]

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